IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4618 OF 2005

IN

FIRST APPEAL NO. 1085 OF 2004

Mrs. Vrinda G. Pai ..Applicant

(Ori.Resp. No.3)

versus

Nalini A. Keni & ors. ..Respondents

Mr. P. S. Dani for the Applicant.

Ms. S. Mane i/b. P. B. Shah for the Respondents No.1 to 6.

Mr. J. J.Xavier for the Respondent No. 7 - MCGM.

CORAM : D. G. DESHPANDE,J.

DATE : 21ST OCTOBER,2005

P.C. :

1. Heard.

2. This Application is filed by the applicant - original Respondent No.3 for vacating the stay. The stay came to be granted in T.E. & R. Suit No. 54/64 of 2003 filed by the applicant original

Respondent No.3 in the Court of Small Causes (Bandra Branch). This court granted ad interim stay. Counsel for the applicant in this application contends that under no circumstances the proceedings in the Court of Small Causes could have been stayed and there was no justification for original appellants in obtaining the order of the stay.

3. Counsel for the applicant contends that the property described in the Small Causes Court Suit and the present suit is same and the applicant's rights are affected. I do not find any justification in continuing the stay. By filing a suit before the Small Causes Court the original appellants have taken a particular stand. They want an order of the court regarding eviction. They cannot be prevented from proceeding further with the suit. Therefore, stay granted in Civil Application No. 3662 of 2004 regarding the Small Causes Court suit, is vacated. The apprehension of the original appellants - respondents that if the stay is vacated, the First Appeal will become infructuous, has no basis.

4. Civil Application is disposed of.

21.10.2005 (D.G. DESHPANDE, J.)